

State of Wisconsin Department of Public Instruction

Elizabeth Burmaster, State Superintendent

Assembly Committee on Judiciary and Ethics September 13, 2007

Department of Public Instruction Testimony on Assembly Bill 433

Thank you Chairperson Gundrum and committee members for the opportunity to testify on Assembly Bill 433. My name is Rick Grobschmidt. I am the Assistant Superintendent with the Division for Libraries, Technology, and Community Learning and am here today to speak for information only.

Wisconsin library law provides important privacy protections for library users. Free access to ideas and freedom of expression are bedrock principles of this country and are incorporated into the Bill of Rights. Libraries are institutions dedicated to the ideal of freedom of expression and inquiry. Freedom of inquiry is protected only if people can be assured that records of their library reading, research, and viewing habits are protected from inappropriate disclosure.

Increased use of video surveillance systems in libraries raised questions about the treatment of these video recordings under s. 43.30. In response, the DPI requested an Attorney General opinion to clarify the application of s. 43.30 to library video surveillance recordings and other library records. The November 27, 2006, opinion made it evident that certain changes in s. 43.30 may be desirable, and urged the DPI to work with the statewide library community to craft appropriate changes. Based on our work on this issue we are nearly ready to distribute a bill draft incorporating recommended changes supported by the majority of the state's library community.

We commend Senator Ellis and Representative Kaufert for moving ahead with a bill to address the application of s. 43.30 to library video surveillance recordings; however, we believe our bill will represent a more comprehensive approach to the issues raise by the Attorney General opinion.

The DPI bill addresses three issues of concern to Wisconsin libraries:

1. Our bill would make it permissible for a library to disclose library video surveillance recordings to law enforcement officials in situations in which illegal activity may have been committed in or around the library or when an individual may otherwise have violated library regulations. Library video surveillance recording may be helpful to the police in curbing illegal behavior such as theft or damage to library property, or the theft of personal property in the

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ander van de state de la company de la c La company de la company d La company de la company d library or outside the library in the parking lot or other areas covered by library surveillance cameras.

- 2. Our bill would make it explicit that a library may release records to "protect against an imminent threat to the life or safety of an individual." According to the Attorney General opinion, disclosure of library records for this type of serious emergency purpose is allowable under current law. However, we believe it may be desirable to make this explicit in the statutes in order to help prevent possible confusion about the legality of the release of records in an emergency situation such as the abduction of a child in the library.
- 3. Our bill would make it permissible for a library to disclose library records to law enforcement officials and/or a private collection agency to help seek the return of long-overdue materials or seek compensation for the value of non-returned materials. According to the Attorney General opinion, under current law this type of disclosure of library records is only legal if a court order approves the specific disclosure.

AB 433 only addresses criminal conduct at the library, while our bill would provide for a more comprehensive approach to the release of library records for the enforcement of library regulations and local, state, and federal law; while also protecting the privacy of library use.

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Testimony of Paul Nelson Member, Wisconsin Library Association (WLA) Chair, Library Development & Legislation Committee

Assembly Committee on Judiciary and Ethics AB433 (For Information Only)

September 13, 2007

Representative Gundrum and other members of the Committee,

Thank you for the opportunity to present my testimony to you today.

My name is Paul Nelson. I've been a member of the Wisconsin Library Association for 29 years and currently serve as chair of the WLA Library Development & Legislation Committee. I present this testimony on behalf of the more than 2,000 members of the association, as well as the thousands of other library advocates across the State of Wisconsin.

We appreciate the work that Representative Kaufert and Senator Ellis and their staff members have done with a bill to address the application of s. 43.30 to library video surveillance. The Wisconsin Library Association, however, has not taken a position on this legislation for two reasons.

The first concern is that we feel the language used in 43.30(5) is overly broad. WLA suggested the phrase "that are pertinent to the alleged criminal conduct" be added to this section, which was accepted by Rep. Kaufert and Sen. Ellis. We are still uncomfortable with the introductory clause of this section: Upon the request of a law enforcement officer...

A second, much larger, concern arises from the Attorney General's opinion to a request from DPI to clarify the application of s. 43.30 to library video surveillance recordings and other library records. As a result of this opinion, it became clear that certain changes needed to be made to s. 43.30. The statewide library community has worked with DPI staff to address these issues, and they are set forth in an issue paper attached to my testimony.

The WLA Library Development & Legislation Committee has not yet had a chance to review a DPI bill on release of library records. This proposed legislation, however, will address the various privacy-related issues the committee has been discussing at length this year. Speaking as a Library Director, I am more comfortable with the DPI language that refers to the disclosure of records produced by a surveillance device. This language, for example, would have clearly granted Neenah Public Library Director Stephen Proces the authority to turn over surveillance tapes without a court order.

Once again, I want to thank Rep. Kaufert and Sen. Ellis for raising the issue of video surveillance tapes in libraries. AB 433 addresses investigations of only criminal conduct in libraries. The DPI bill would provide for a more comprehensive approach—one that takes into consideration all of the issues set forth in the attached WLA issue paper.

Amendment to Wisconsin's Library Record Confidentiality Law

Recommendation in Summary

WLA seeks an amendment to s. 43.30 that would create a new narrow exception to the court order requirement for release of library records for library administrative purposes including collection of fines and penalties, and the protection of library staff, library users, and library property.

Background

Wisconsin's library record confidentiality law (s. 43.30) essentially provides that public library records indicating the identity of any individual library user may not be disclosed except by court order, or to persons acting within the scope of their duties in the administration of the library, to persons authorized by the individual to inspect the records, to custodial parents of children under the age of 16, or to other libraries for purposes of interlibrary loan.

On November 27, 2006, the Wisconsin Attorney General's office issued an informal opinion on the application of s. 43.30 to library video surveillance recordings. This opinion was in response to a request for an opinion from the State Superintendent of Public Instruction based on issues raised by the Sun Prairie Public Library. There had been situations in which local police wanted to review library video tapes, as well as situations in which library officials wanted the police to view library surveillance tapes, in one case, because the library's donation box was stolen while the library was open.

The AG opinion concludes the following:

- All library video surveillance recordings fall within the protections of s. 43.30, including recordings that may identify an individual in the library but do not identify the particular library materials or resources used by that individual.
- Also protected are recordings that only show individuals entering or exiting the building, since these recordings may identify individuals who are using the resources of the library in some fashion.
- Only with a court order may library staff disclose library video recordings or other library records to law enforcement officials (or others) for such purposes as seeking assistance with the recovery of stolen library property or the prosecution of persons who vandalize library property. The only exception to the court order requirement is if someone's life or safety is at risk, such as a child abduction at the library. In such a case, library staff could provide police with video recordings without a court order.
- Wisconsin Statutes s. 43.30 does not preclude library staff from reporting to police observations of criminal activity in the library. So, if library staff observe a patron steal library materials or assault another patron, staff may certainly report the crime to the police and identify the perpetrator. If staff observe possible criminal activity on videotape after the fact, staff may disclose detailed information regarding the crime to police without disclosing the patron's identity. Officers may then obtain a court order to secure release of the records.

The AG opinion recommends that the statewide library community develop and propose amendments to s. 43.30 that "cure some of the statute's deficiencies". In particular, they suggest that s. 43.30 could be amended to simultaneously protect library patron privacy and still allow library staff to provide library surveillance videos (or other library records) to the police when criminal activity is suspected or witnessed.

Additional issues are raised by the fact that many Wisconsin libraries currently provide law enforcement officials with library records (not video recordings) to assist with the recovery of non-returned materials, without first obtaining a court order. Other libraries use private collection agencies for these purposes. According to this AG opinion, these practices are probably not allowable.

Based on the input gathered by the Wisconsin Library Association's Library Development & Legislation Committee, we believe the following 5 points summarize what the library community wants to accomplish through an amendment to s. 43.30 (confidentiality of library records):

1. Allow the library to release library records to protect against imminent threats to the life or safety of an individual. [The Attorney General's opinion said this is allowable under the current statute, but we think it would be advisable to make this explicit in the text of s. 43.30.]

- 2. Allow the library to release records to law enforcement officials when reporting apparent illegal activities. [These records could be surveillance video recordings as well as registration records indicating the identity/address, etc. of the suspect.]
- 3. Allow the library to release records to law enforcement officials or a collection agency for the purpose of recovering overdue library materials or collecting fines and penalties.
- 4. Allow the library to release records to a business partner of the library for management of library data, transfer of library data from one records management system to another, and statistical analysis of library use data.
- 5. Allow the library to release records to a business partner of the library for purposes of conducting library user surveys, educating library users, or otherwise promoting the legitimate services, programs or other interests of the library.

The library community definitely wants to protect against opening up library records to "fishing expeditions" or other releases of records that could compromise the privacy of library use.

Below is draft s. 43.30 amendment language (in italics - section 5) endorsed by the WLA.

Draft amendment language of 43.30 (Text in blue represents necessary technical changes to the law)

43.30 Public library records.

(1b) In this section, "custodial parent" includes any parent other than a parent who has been denied periods of physical placement with a child under s. 767.24 (4) [s. 767.41 (4)].

43.30 - ANNOT.

NOTE: The correct cross-reference is shown in brackets. Corrective legislation is pending.

- (1m) Records of any library which is in whole or in part supported by public funds, including the records of a public library system, indicating the identity of any individual who borrows or uses the library's documents or other materials, resources, or services may not be disclosed except by court order or to persons acting within the scope of their duties in the administration of the library or library system, or persons designated by the library to assist the library or library system in the enforcement of library regulations, to persons authorized by the individual to inspect such records, to custodial parents or guardians of children under the age of 16 as required under <u>sub. (4)</u>, or to libraries as authorized under <u>subs. (2)</u> and (3), or as deemed necessary by the library to protect against imminent threats to the life or safety of an individual.
- (2) A library supported in whole or in part by public funds may disclose an individual's identity to another library for the purpose of borrowing materials for the individual only if the library to which the individual's identity is being disclosed meets at least one of the following requirements:

(a) The library is supported in whole or in part by public funds.

- (b) The library has a written policy prohibiting the disclosure of the identity of the individual except as authorized under sub. (3).
- (c) The library agrees not to disclose the identity of the individual except as authorized under sub. (3).
- (3) A library to which an individual's identity is disclosed under <u>sub. (2)</u> and that is not supported in whole or in part by public funds may disclose that individual's identity to another library for the purpose of borrowing materials for that individual only if the library to which the identity is being disclosed meets at least one of the requirements specified under <u>sub. (2) (a)</u> to <u>(c)</u>.
- (4) Upon the request of a custodial parent or guardian of a child who is under the age of 16, a library supported in whole or part by public funds shall disclose to the custodial parent or guardian all library records relating to the use of the library's documents or other materials, resources, or services by that child

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Libraries should be free to share video with police

It shouldn't take a court order to allow a public library to give one of its surveillance videotapes to police if it suspects it can help dentify a lawbreaker.

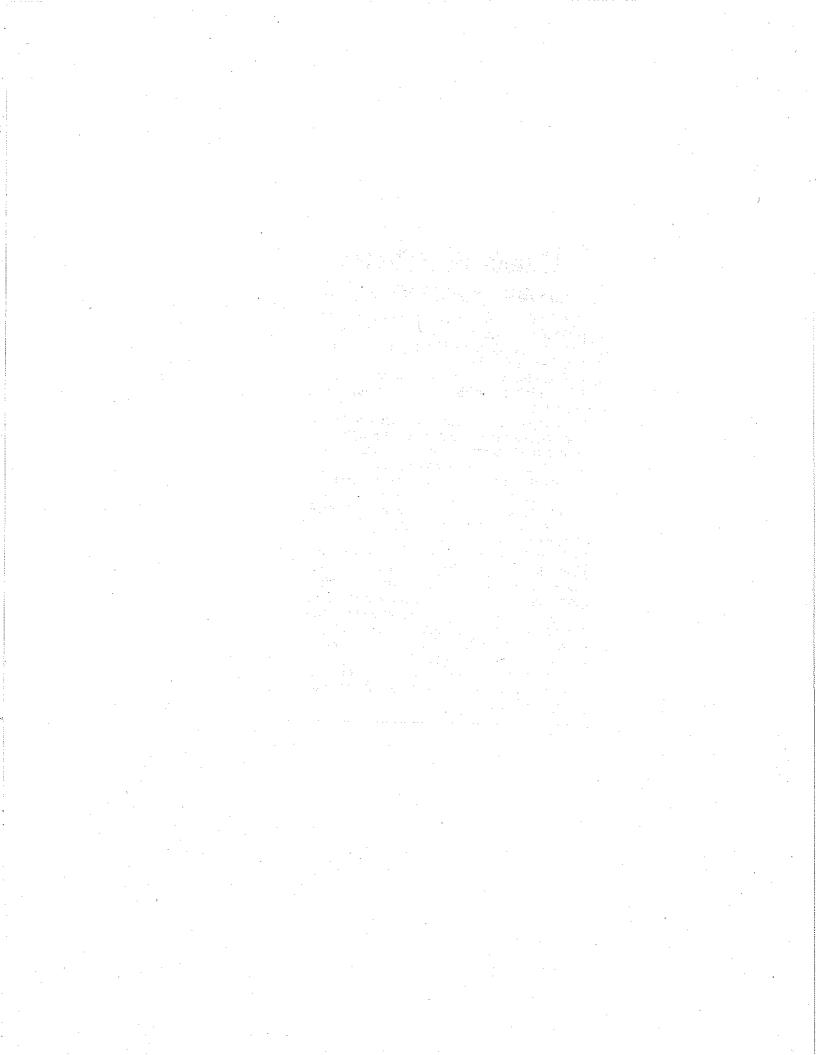
That's the way the law reads now, as part of Wisconsin's public library records confidentiali-

But, spurred by a case at the Neenah Public Library, Neenah lawmakers Sen. Mike Ellis and Rep. Dean Kaufert want to change the law.

The case involves a surveillance video the Neenah library had of a man who was suspected of masturbating in the book aisles of the library. The library had to wait for a court order to be issued before giving the tape to the Neenah police.

It shouldn't have needed to. And it's not just law enforcement that's trying to change it. The state Department of Public Instruction, which oversees public libraries, and the Wisconsin Library Association already support an exemption to the public library records law that would allow libraries to share video with police when

Kaufert said he and Ellis soon will introduce the proposal as a bill. It makes too much sense not to be passed into law.



Kaufert calls for change in law after library incident

By DUKE BEHNKE NEWS-RECORD STAFF WRITER

NEENAH --- State Rep. Dean Kaufert wants the Legislature to change the law that prevents public libraries from sharing surveillance video with police without a court order

The Neenah Public Library es surveillance video of a man who reportedly was masturbating between the book aisles on the library's second floor earlier this month.

Library officials want the suspect caught, but according to a Nov. 27 opinion by the attorney general's office, surveillance video falls within the protections of the Wisconsin public library records confidentiality law and cannot be released without a court order.

Kaufert, R-Neenah, said the issue drew his ire the moment he read about it last week in The

"It's another example where some bureaucrat is interpreting

the law way too broadly," he said. "I don't want to see the police department have to jump through hoops just to do an investiga-



Kaufert said his staff would work with the state Department of Public Instruction and the Wisconsin Library Association, which have drafted a narrow exception to the law that would allow libraries to share surveillance video with police when criminal activity is sus-

pected.
"We will send it around for cosponsors in the next week," Kaufert said. "Then we will introduce it as a bill."

State Sen. Michael Ellis, R-Neenah, also wants the law

changed.
The right to privacy is impor-tant, but it should not trump the right of the public to be protectDirector Stephen Proces commended Kaufert and Ellis

for pursuing the change.

"That is exactly what we wanted,"
Proces said. "I am

hoping they get the amendment

passed quickly. Meanwhile, City Atty. James Godlewski drafted a court order necessary for police to view the surveillance tapes of the man suspected of masturbating in the

Police Chief Ray Appel said the order would be presented to Winnebago County Circuit Judge Bruce Schmidt for approval

The attorney general's office advised Neenah to seek the order in circuit court rather than municinal court.

The attorney general's office said in its opinion that library surveillance video recordings fall within the protections of the

confidentiality law.

The law generally prevents the release of public library records that indicate the identi-

ty of a library user.

The opinion determined the law applies to recordings that might identify a person but not the particular library materials sources used by that person and also to recordings that show people entering and exiting the building. The only exception to the law is if someone's life or safety is at risk

The masturbation incident occurred April 2 and was witnessed by a library patron and reported to a reference librarian, who called police. The suspect left the library, 240 E. Wisconsin Ave., before he was identified. "We think that this guy has

been here before doing something similar but not as graphic," Proces said.

Appel said the "this is the

first time we have ever run

Alan Lee, the assistant attorney general who wrote the Nov. opinion, said he thought the confidentiality law could be amended to simultaneously protect the privacy rights of library patrons and allow library staff to provide surveillance tapes to police when criminal activity is suspected or witnessed.

I would recommend that the Department of Public Instruction, in consultation with library associations and librarians, pro pose amendments to the present statute to cure some of the statute's deficiencies," Lee said.

Mike Cross, the Department of Public Instruction's director of public library development, said he has worked with the Wisconsin Library Association to craft an amendment to create a narrow exception to the law for "the protection of library staff, library users, and library property."

Duke Behnke can be reached at 920-729-6622, ext. 32, or dbehnke@newsrecord.net.

Neenah police obtain library surveillance video

By DUKE BEHNKE

POST-CRESCENT STAFF WRITER

NEENAH - Police have obtained the surveillance video that shows a man suspected of masturbating in the Neenah

Public Library on April 2, but investigators have been unable to identify him.

"The images aren't as clear as

we had hoped," Police Chief Ray Appel said last Thursday.

Appel said the surveillance video shows the suspect entering the library, exiting a second-floor restroom and leaving the library. He said it does not show the man masturbating among the book aisles as re-

Appel

ported by a library patron.

Appel said investigators will compare the images with the Wisconsin sex offender registry to try to identify the suspect. He said police might release a

ON THE WEB

www.ci.neenah.wi.us

photo of the suspect taken from the video to spur leads.

"We are looking for help in identifying who he is," he said. The suspect is described as 25 to 30 years old, 5 feet 10 inches tall and about 200 pounds. He has fair skin and

buzz-cut blond or brown hair. view the surveillance video because the attorney general's office ruled in November that

surveillance videos fall within the protections of the Wiscon sin public library records confi-dentiality law and could not be

released without a court order.
The subpoena was signed by Winnebago County Circuit Judge Bruce Schmidt and served the next day on library director Stephen Proces, who turned over the surveillance video and still photographs made from the video.

"It's pictures of a guy none of Police needed a subpoena to us recognize," Proces said. "He

Duke Behnke can be reached at 920-729-6622, ed. 32, or dbehnke@newsrecord.net.

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Neenah police can't see alleged lewd act by man

By Duke Bennke Post-Crescent staff wnter

NEENAH 🚐 Neenah Public Library possesses surveillance video of a man who re-portedly was masturbating earlier this month among the nonfiction book aisles on the library's second

floor. Library Stephen Proces said he wants the suspect caught. He has shown the surveillance video



Director

to the ary a Proces employees and directed them to call

police if they see the man enter the library again.

He can't legally share the video with police without a court order, howev-

That is state law," City Atty. James Godlewski said Monday. The library is merely following what state law says."

The attorney general's office said in a Nov. 27 opinion that library surveillance video recordings fall within the protections of the Wisconsin public library records confidentiality law.

The law generally prevents the release of public library records that indi-cate the identity of a library user.

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Heorisly-protect the privacy. the Department of Public Incould be amended to simultacause the offense might rights of library patrons and ressed by a library paired and unsure how to proceed belance tapes, but he said he was tion, not a crime that would be charged by the district attor-ney's office and heard by a cirit judge. Appel said it is unclear amount to an ordinance violaect left the library, 240 E. Isconsin Ave., before he was aw is if someone's life or safeeported to a reference librarian, who called police, The sus-

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Lawmaker: Give police 🖁 video help

Surveillance footage requires a court order

By Duke Behnke

Post-Crescent staff writer

NEENAH - State Rep. Dean Kaufert said Tuesday he wants the Legislature to change the law that prevents public libraries from sharing surveillance video with police without a court order.

The Neenah Public Library possesses surveillance video of a man who reportedly was masturbating between the book aisles on the library's second floor earlier this month.

Library officials want the suspect caught, but according to a Nov. 27 opinion by the attorney general's office, surveillance video falls within the protections of the Wisconsin public library records confidentiality law and cannot be released without a court order.

Kaufert, R-Neenah, said the issue drew his ire the moment he read about it in The Post-Crescent.

"It's another example where some bureaucrat is interpreting the law way too broadly," he said. "I don't want to see the police department have to jump through hoops just to do an investigation.

Kaufert said his staff would work with the state Department of Public Instruction and the Wiscon- dbehnke@postcrescent.com.

sin Library Association, which already have drafted a narrow exception to the law that would allow libraries to share surveillance video with police when criminal activity is suspected.
We will send it around

for co-sponsors in the next week," Kaufert said. "Then we will introduce it as a

State Sen. Michael Ellis, R-Neenah, also wants the

law changed.

"The right to privacy is important, but it should not trump the right of the public to be protected," he

Neenah Library Director Stephen Proces commended Kaufert and Ellis for pursuing the change.

That is exactly what we wanted." Proces said. "I am hoping they get the amendment passed quickly.

Meanwhile, City Atty. James Godlewski drafted a court order necessary for police to view the surveillance tapes of the man suspected of masturbating in the library.

Police Chief Ray Appel said the order would be presented to Winnebago County Circuit Judge Bruce Schmidt for approval.

The attorney general's office advised Neenah to seek the order in circuit

court rather than municipal court.

Duke Behnke can be reached at 920-729-6622, ext. 32, or

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Neenah police obtain library surveillance video of suspect

By Duke Behnke

Post-Crescent staff writer

NEENAH - Police have obtained the surveillance video that shows a man suspected of masturbating April 2 in the Neenah Public Library, but investigators have been unable to identify him.

"The images aren't as clear as we had hoped," Police Chief Ray Appel said Thursday. "We are not a photograph of the susgetting any kind of detail."

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We are looking for help in identifying who he is," he said.

The suspect is described as 25 to 30 years

show the man masturbat-old, 5 feet 10 inches tall He has fair skin and buzzcut blond or brown hair.

Police needed a subpoena to view the surveillance video because the attorney general's office ruled in November that surveillance video falls within the protection of the Wisconsin public library records confidentiality law and could not be released without a court order.

The subpoena was signed Tuesday by Winnebago County Circuit Judge Bruce Schmidt and served Wednesday on Library Director Stephen Proces, who turned over

How to contact police

Anyone with information regarding the suspect in the incident at the Neenah Public Library is asked to call the Neenah Police Department at 920-886-6000.

the video and photographs made from the video.

"It's going to be difficult (to identify the suspect)," Proces said. "It's pictures of a guy none of us recognize.'

Rep. Dean Kaufert, R-Neenah and Sen Michael Ellis, R-Neenah, said Tuesday they would introduce legislation to amend the confidentiality law to allow public libraries to share videos with police without a court order when criminal activity is suspected.

Duke Behnke can be reached at 920-729-6622, ext. 32, or dbehnke@postcrescent.com.

